
From: Keith Allred
Sent: Monday, February 14, 2011 10:30 AM
To: 'rudy@pittmandental.com'
Cc: Robin Bartolo
Subject: RE: EMAIL COPY - NOTICE OF TRADEMARK INFRINGEMENT

Hello Rudy:

Thank you for your call and explanation today concerning the use of the BRUXZIR mark to describe dental laboratory services in the nature of full contour crown and bridge dental restorations using zirconia.

BruXZir® / BRUXER: sounds the same doesn't it? And, that is what gives rise to the matter of trademark infringement. A trademark infringement is based on "confusing similarity" of marks and services, and marks can be confusingly similar even if not *identical*.

The *confusingly similar* type of infringement is different from, for example, third parties' use of reserved marks like "Super Bowl" and "Olympics" without authorization, although the principles are the same. The basic principles also apply to slogans and nicknames.

For example, a radio station with the call sign KISS is entitled to claim an infringement of their mark by another station's use of KIIS. Although the call signs are different—and even if as in this instance meeting with FCC approval—a federal court would find that that one infringed the other as a matter of trademark law since they were pronounced the same way. (*Citicasters Licenses, Inc. v. Cumulus Media, Inc.*, 189 F. Supp. 2d 1372, 1377)

Prior to the promotion of the BruXZir® mark the use of all-ceramic crowns—even for patients with parafunctional problems—was counterintuitive. It is true that words like bruxism and clencher are descriptive. Even so, even descriptive words—such as when applied to professional dental products—can be appropriated to one party's exclusive use: descriptive terms become exclusive trademarks when they acquire secondary meaning. Glidewell Laboratories has exclusively and extensively used the mark BRUXZIR in the dental industry. Unquestionably the mark has acquired secondary meaning to dentists and GL has the exclusive right to use the mark in the dental field, especially where Glidewell is catering to the same channels of trade.

As we discussed, Glidewell has used the mark BRUXZIR in connection with full contour zirconia crowns. As you know, Glidewell Laboratories owns the federal registration number for the mark. Like the Glidewell product, your product is also sold only to dentists and dental professionals.

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Since both products are closely related and move in the identical marketing channels (to dentists) and the marks are virtually identical, there is little doubt that your firm's marketing of a crown under the mark *BRUXER All-Zirconia Crown* would constitute trademark infringement.

If you would like to fulfill prescriptions for BruxZir® crowns and bridges give us a call. I included Robin Bartolo's contact information on this email; he can answer any questions you may have about it.

Sincerely,
Keith

Keith Allred



**GlideWell
LABORATORIES**
GlideWell Laboratories
4141 MacArthur Blvd.
Newport Beach, CA 92660
(800) 854-7256
www.glideWellDental.com

From: Keith Allred
Sent: Wednesday, February 09, 2011 2:19 PM
To: 'support@pittmandental.com'
Subject: EMAIL COPY - NOTICE OF TRADEMARK INFRINGEMENT



February 9, 2011

TRANSMITTED VIA EMAIL AND FAX AND DELIVERED BY U.S. MAIL

Pittman Dental Laboratory
2355 Centennial Circle
Gainesville, GA 30504-5799 USA

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Local: (770) 534-4457
Fax: (770) 503-1173
support@pittmandental.com

Attn: President

**Re: Infringement of Glidewell Laboratories' BruxZir® Trademarks, Misbranding,
Violation of Federal Acts and State Statutes and Unfair Business Practices**

The serious matter of your infringement of my client's proprietary property rights in connection with the unauthorized use Glidewell Laboratories' registered trademarks on your work order has come to our attention. You are not on the list of BruxZir® authorized dental laboratories.

Glidewell Laboratories has for years used the mark BRUXZIR both nationally and internationally to identify its dental laboratory goods and services in the US and its CE certified BruxZir® zirconia milling blanks in Europe. The company enjoys considerable good will associated with its use of the aforesaid mark.

The promotion of dental laboratory services by your lab of a BRUXER All-Zirconia Crown is using a similar mark where there is an appreciable likelihood of confusion and a palming off of goods by an unauthorized substitution of one brand for the brand ordered, which in this instance is a deliberate misappropriation of intellectual capital for commercial purposes that is actionable unfair competition under California law (California Business and Professions Code §17200)

Under federal law, Trademark infringement is presumptively an unfair exploitation of the monopoly privilege that belongs to the owner of the mark. Infringement is a 'tarnishment' of the owner's mark and results in 'brand confusion' and the likelihood of 'initial interest' confusion as to the actual identity of the source of the goods and services.

For the above reasons, we must insist that you immediately cease use of the infringing marks in your promotions and elsewhere. Should you not terminate use of the mark, Glidewell Laboratories reserves its rights to take legal action to stop you from using the mark by seeking an injunction, monetary relief, and attorney fees.

Please contact me, or have your attorney contact me, within ten days of receipt of this communication if you are unsure about the appropriate steps that you must take to avoid liability for your refusal to discontinue your use of the infringing marks.

Your prompt attention is appreciated.

Sincerely,

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KEITH D. ALLRED
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-- ATTACHMENT "A" --

[Copied from Pittman DL website:
<http://www.pittmandental.com/PDFs/ScriptStand.pdf>]

☐ BRUXER All-Zirconia Crown

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